



Date of Council Meeting: August 8-2016

**TOWN OF LEESBURG
TOWN COUNCIL WORK SESSION**

Subject: Pennington Parking Garage

Staff Contact: Susan Berry Hill, Director, Department of Planning and Zoning
Barbara Notar, Town Attorney

Council Action Requested: Council requested a work session discussion to consider making a formal request to the County of Loudoun to reduce the Pennington Parking Garage to 3 levels instead of four levels.

Staff Recommendation: None at this time.

Commission Recommendation: Not applicable.

Fiscal Impact: Not applicable.

Work Plan Impact: Not applicable.

Executive Summary: On February 23, 2016, the Pennington Parking Garage was approved by Town Council to include 930 parking spaces on four levels. At that time, and since then, residents in the area expressed concern about the height of the garage, and have questioned if the garage could be reduced to three levels. The County of Loudoun reviewed this request and provided the Town with a draft report that supported their need for four levels of parking.

Background: The parking requirements for Government Center District allow for the selection of a parking standard that best meets the needs of a particular government use. At the beginning of the review of TLZM 2015-0003, Town staff asked the County to provide parking ratios that the County believed would address the needs of the Courts Expansion. The County decided that the existing ratio would be adequate to serve the Courts Expansion.

During the review of the application, County representatives determined that the garage should also serve other government office parking needs. The County was also clear during the public hearings at Planning Commission and Town Council that these extra spaces were intended for the parking of other County employees or fleet parking.

The proffers that were accepted by Council with the approval of the application are clear that the fourth story of the garage may be constructed at the discretion of the County, and that the fourth level is not required based on their needs for the courts alone. Sheet 4 of 22 of the approved Concept Plan indicates that 717 spaces are required, but that 930 are proposed – an excess of 213 extra spaces.

Since the approval of the garage, several questions have been asked of Town staff regarding whether the Council could “waive” the approval of the fourth level or if the standard that was used to determine the number of required parking spaces could be amended. Regarding the former, staff is of the opinion that the County is vested in their right to build the garage as approved under Va. Code Section 15.2-2307, and therefore, Council cannot, on its own, and without the consent of the County, modify the proffer which governs the parking garage.

This opinion is based on a three part test contained in this code section:

- 1) A significant governmental act. This refers to the fact that “the governing body has approved an application for a rezoning for a specific use or density”. In this case, a four-story parking garage was approved.
- 2) The applicant “relies in good faith on the significant governmental act”. The County has proceeded toward development of the garage by submitting a site plan application that complies with the rezoning rights.
- 3) The applicant “incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the significant affirmative governmental act.” At present, the site plan for the project is ready for approval absent final bonding requirements. The applicant has incurred costs in preparing the site plan and by all reasonable accounts, has diligently pursued the approval of the plan.

There are two administrative ways to amend the parking “ratio” standard that was used with the Pennington Parking Garage approval, but again, these options require County initiation and approval:

- 1) Minor Modification under Zoning Ordinance Section 3.3.20. This allows the Land Development Official (LDO) to consider a new parking standard. The LDO may approve an alternative standard when it is determined that criteria in the Ordinance are met. Staff believes that a reasonable case could be made under this ordinance provision to reduce the parking ratio in order to achieve a reduction in the scale and mass of the Pennington Garage. The County would need to make the written request to initiate such action. An alternative parking ratio would need to be submitted from the County to the LDO for consideration.
- 2) Va. Code Section 15.2-2302(B) Procedure. This is also an administrative procedure, but it requires Town Council action at a public meeting. Basically, the Town Council can approve an amendment to existing proffers *without a public hearing* when the amendment “does not affect conditions of use or density”. This may be an alternative Council could consider; however, staff does not advise this due to the opinion that the County is vested in their right to build four levels of the garage as was approved through TLZM 2015-0003.

Since the approval of the Pennington Parking Garage, at the request of Council, the Town Manager has discussed the possibility of reducing the garage to three levels with the County Administrator. The County Administrator responded by stating that on behalf of the County

Pennington Parking Garage

August 8, 2016

Page 3

Board of Supervisors, the County wishes to maintain the approval of 930 parking spaces for the garage, and there is no interest in reducing the number of parking spaces. Without the County's request and approval, neither the Council nor staff can reduce either the parking requirement or the proffer governing levels of the parking garage.